

DECISION



18986 *Gapiker*
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-198340 DATE: July 28, 1981
MATTER OF: Systems Group Associates, Inc.

DIGEST:

1. Protest against cancellation of solicitation and sole-source award of contract for automatic data processing equipment to support hospital patient care system is denied where record indicates equipment could be furnished by only one source.
2. Protest by firm that supplies automatic data processing equipment against purchase of software package on sole-source basis is denied. Protester has not identified any specific software package which it might offer or modify that would be compatible with already-installed system, and thus has not met burden to prove that sole-source purchase was improper.

This protest by Systems Group Associates, Inc. (SGA) stems from the cancellation of request for proposals (RFP) DCGH JB/80087 issued by the District of Columbia General Hospital (DCGH). The RFP was for automatic data processing (ADP) equipment (hardware) to support a proprietary Patient Care System (PCS) (software, i.e., computer programs, procedures and associated documentation) which was to be procured on a sole-source basis from McDonnell Douglas Automation Company (McAuto). The RFP was canceled because DCGH determined that only McAuto-furnished ADP equipment could support the McAuto PCS. SGA objects to DCGH's decisions to cancel the RFP and

[Protest of RFP Cancellation]

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to award either contract (the sole-source PCS contract or the contract for hardware) to McAuto. SGA also seeks to recover proposal preparation costs incurred in responding to the hardware RFP.

The protest and the claim are denied.

McAuto markets an integrated hospital data processing system which consists of several separate modules which can be added in units as a system is expanded to support many different hospital functions. DCGH sought approval for the entire McAuto system in 1978 but did not contract for all of it at that time because of funding limitations. The instant software procurement involves adding the McAuto PCS software package to the portion of the McAuto system which was installed in 1978.

SGA originally protested only the cancellation of the hardware solicitation. SGA contended that the cancellation was improper because at least 15 firms expressed an interest in the procurement, and at least one (SGA) responded by submitting a proposal. SGA subsequently learned, however, that the hardware solicitation was canceled because DCGH had decided to enhance its data processing system by awarding a sole-source contract to McAuto for McAuto's PCS software. In this regard, DCGH reported that it found it impossible to contract with anyone but McAuto for the ADP equipment because McAuto's PCS is designed to be used on specially modified hardware which at present only McAuto can furnish. DCGH further stated that McAuto has refused to provide specifications for hardware or to advise DCGH as to how the required modifications are made, and has refused to convert its software to permit it to be used on equipment other than McAuto-modified equipment.

In this respect, our Office has recognized that non-competitive awards are justifiable where work or supplies required can only be furnished by one source. There may be only one source because items or services needed are unique; time is of the essence and only one known source can meet the Government's needs within the time available; data which would be needed to permit a competitive

procurement is unavailable and cannot be obtained within the time available; or only a single source can provide an item which must be compatible or interchangeable with existing equipment. Precision Dynamics Corporation, 54 Comp. Gen. 1114 (1975), 75-1 CPD 402.

SGA has proffered no substantive evidence to show that the McAuto PCS software can be supported by any other hardware, and we thus have no basis to conclude that DCGH's decision to purchase the McAuto hardware was improper. See Systems Group Associates, Inc., B-195392, January 17, 1980, 80-1 CPD 56; Hayden Electric Motors, Inc., B-186769, August 10, 1977, 77-2 CPD 106. The protest regarding the hardware procurement is therefore denied.

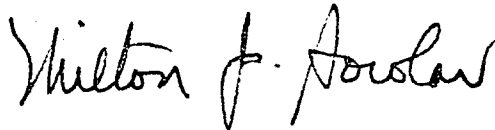
After learning of DCGH's decision to purchase the software from McAuto on a sole-source basis, SGA amended the protest to argue that the decision, which as indicated essentially precluded any firm other than McAuto from securing the hardware contract, was improper.

In response, DCGH points out that SGA has had "every opportunity" since the protest was filed to show that it could furnish a patient care system, but has not done so.

The protester has the burden to affirmatively prove its case. Singleton Contracting Corp., B-201228.2, June 23, 1981, 81-1 CPD ____. SGA has not identified any specific hospital patient care package which it might offer or modify to satisfy DCGH's needs. While SGA maintains that there are various software packages available which might be adapted to DCGH's needs, it has not specified any particular ones or indicated that it has the data necessary to modify such packages to be compatible with the already-installed portions of the McAuto system, and to thereby fulfill DCGH's requirement for a highly specialized, integrated hospital system.

Under the circumstances, we have no basis to conclude that any firm other than McAuto could furnish to DCGH a patient care system that would meet the hospital's needs. The protest on this issue is denied.

Finally, we consider SGA's claims to recover proposal preparation costs which it incurred in responding to the hardware RFP. Proposal preparation costs can be recovered only if the agency acted arbitrarily or capriciously toward a claimant who otherwise would have had a substantial chance of receiving the award. Morgan Business Associates, Inc. v. United States, 619 F.2d 892 (Ct. Cl. 1980). Since as stated above DCGH could not have awarded a contract under that RFP in any event, the claim is denied.

A handwritten signature in cursive script, reading "Milton F. Fowler".

Acting Comptroller General
of the United States